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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,513	12/07/2001	Stephen A. Buia	ADA-001.01	8588

25181 7590 05/28/2003

FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON, MA 02110

EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8e

Office Action Summary

Application No.

10/021,513

Applicant(s)

BUIA ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 6, 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7 and 10-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 3. 6) ☐ Other:

DETAILED ACTION

Restriction

Claims 6, 8, and 9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5. The traversal is on the grounds that the restriction is inaccurate. The examiner notes that Figs. 3c and 4 are to the same invention. This does not eliminate the restriction since the claims are directed to the elected group of a constant cross-section. It is noted that this feature is not shown. Additionally, applicant argues that the hemispherical feature of the claim 14 is generic. It is not clear how the projections as seen in Figs. 3a, 3b, or 6 are hemispherical in cross-section. Claim 16 would appear to be generic but there is no cross-section of Fig. 6 to confirm this distinction. A proper generic claim must account for all the aspects of each of the species. The claims remain with the application and have been examined in the following office action. The restriction is deemed proper and therefore made final.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "each projections has a cross-section having a substantially hemispherical shape", "wherein the receptacle has a height and a cross-section having a first extent, the first extent of the

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cross-section being substantially constant over the height" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 4, it is not clear how the protrusions have a substantially hemispherical cross-section. It is not clear what shape or structure is required for the protrusions to meet this limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7, 10, 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dietterich (US 5,190,151). Regarding claim 1, see Figs. 1-7, where the claimed structure is shown. The projections are 17, 18, 19, and 20. The projections are capable of retaining a sample having an orientation where the projections are shaped and arranged to inhibit a change in the orientation of the sample when stored in the container. The projections define a region for receiving a sample. Regarding claim 2, each of the protrusions has three vertical surfaces; one side surface is the first surface and it faces the inner surface, the other side surface is the second surface and the thin end surface is the third surface. As seen in Fig. 2, all of the vertical surfaces are substantially planar. Regarding claim 3, the second side is oriented in a direction substantially perpendicular to the third side. Regarding claim 4, as it is best understood, the projections have a substantially hemispherical cross-section since the upper end of the projections is curved as seen in Figs. 1, 3, and 4. Regarding claim 5, see Fig. 1, where the projections are integrally formed with the receptacle. Regarding claim 7, see Fig. 3, where the receptacle has a height and a cross-section having a first extent at the top of the container and the first extent of the cross-section being substantially constant over the height. Moreover, the cross-section is substantially constant over the entire height of the receptacle since substantially allows for some variation which would include the rounded connection of the wall 14 to the base 31. Regarding claim 10, see Fig. 1, where the over is 12. Regarding claim 13, the sidewall 14 extends upward from the base 31. Regarding claim 14, see Fig. 3, where the sidewall 14 extends substantially perpendicular to base 31. Regarding claims 15 and 16, see Fig. 3, where

the projections extend upwards from the top surface of the base 31 and the projections are substantially perpendicular to the base. Regarding claim 17, 15 is the marking panel that is smooth and extends from an end of the base. The base has an end that is the periphery of the base 31 and an end that is the inner periphery of the base 31. The marking panel extends from the inner periphery end of the base. Regarding claim 18, the angle between 31 and 15 is 180 degrees as measured from the top surface of the base proceeding right to the top surface of 15. This satisfies the at least 90 degrees. Regarding claim 19, the marking panel is integrally formed with the base.

Claims 1-5, 7, 10-16, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Messier et al (US 5,681,740). Regarding claim 1, see Figs 1, 2, and 4, where the claimed structure is shown. 10 is the container and the projections are 20. The projections are not required to touch or contact the inner surface of the sidewall. The projections extend along the inner surface. The projections are extending outward from the inner surface since they are spaced from the inner surface and they extend towards the center of the container. Regarding claim 2, see Fig. 4, where the projections 20 have the three claimed surfaces. One of the surfaces faces the inner surface. The other two are substantially planar. Regarding claim 3, two of the surfaces are substantially perpendicular to each other. Regarding claim 4, as it is best understood, see Figs. 2, where the projections 20 will have a substantially hemispherical cross-section since they have a rounded top. Substantially allows for variation from a true hemispherical shape. Regarding claim 5, see Fig. 2, where the projections 20 are integrally formed with the receptacle. Regarding claim 7, see Fig. 2,

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where the first extent of the receptacle has a height and the cross-section of the first extent is substantially constant over the height. The lower end of the receptacle has a constant cross-section over the first part of its height. Regarding claim 10, see Fig. 2, where 12 is the cover. Regarding claim 11, see Fig. 2, where the seal below the cover makes the cover engage the receptacle to form a fluid-tight seal. See Col. 6, line 33-37. Regarding claim 12, see Fig. 2 and Col. 6, lines 45-47, where the lid cap is threaded and the lid threads engages threads on the container. Regarding claim 13, see Fig. 2, where the sidewall extends from the top surface of the base 16. Regarding claim 14, see Fig. 2, where the sidewall extends in a direction that is substantially parallel to the base. The substantially allows for variation from exactly perpendicular which includes the structure as seen in Fig. 2. Regarding claims 15 and 16, see Fig. 2, where the projections 20 extend from the top surface of the base and are substantially perpendicular to the base. The substantially allows for variation from exactly perpendicular. Regarding claim 20, see Figs. 1 and 2, where the bottom surface of the base has projection extending downward therefrom, the protrusions being shaped and arranged to permit an identification panel containing identifying indicia to be removably and securely attached to the container. The protrusions are capable of holding a panel. The claim does not require the panel only the structure capable of holding the panel.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 10, 12-14, 17-19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singleton (US 3,326,358) in view of Hoogesteger (US 3,524,455). Regarding claim 1, Singleton teaches the claimed structure but does not teach the plurality of projection extending upward along and outward from the inner surface of the sidewall. Hoogesteger, as seen in Figs. 1-3, teaches a similar container with the claimed projections 28. It would have been obvious to employ the projections of Hoogesteger in the container of Singleton to hold the sample as taught by Hoogesteger. The projections of the modified container are capable of maintaining the sample in an orientation when the sample is in the container. There is no structure required by the limitation that is not in the combination of references. Regarding claim 2, see Figs. 2 and 3, of Hoogesteger where the claimed structure is shown. The opposite sides are planar and the inner surface side of the projections faces the inner surface of the sidewall. Regarding claim 4, as it is best understood, the projections have a substantially hemispherical cross-section since they are curved. Regarding claim 5, the projections are integrally formed with the container. Regarding claim 7, see Col. 2, line 48, where the compartments 27 are cylinders. Regarding claim 10, see Fig. 2, where the covers are 27 and 28. Regarding claim 12, the cover threadably engages the receptacle as seen in Fig. 3 of Singleton. Regarding claim 13, see Fig. 3, where the sidewall extends from the top surface of the base. Regarding claim 14, the sidewall extends substantially perpendicular from the top surface of the base since substantially

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allows for variation from exactly perpendicular. Regarding claim 17, see Fig. See Fig. 21, where the marking panel is 21 and extends from a first end of the base and is substantially smooth for receiving identifying indicia. The marking panel could include 22. Regarding claim 18, the angle between the top surface and the exterior surface of marking panel is more than 90 degrees since the angle is obtuse. Regarding claim 19, the marking panel is formed integrally with the base. Regarding claim 21, see Fig. 2, where the claimed structure is shown. The protrusions 25 and 26 are capable of holding an identification panel. The identification panel is not required by the claims. The claims only require the structure for holding a marking panel. The recess is 24. The raised exterior portion is 22 and 21. Regarding claim 22, see the discussion of the above claims where the modified container of Singleton has the claimed structure.

Conclusion

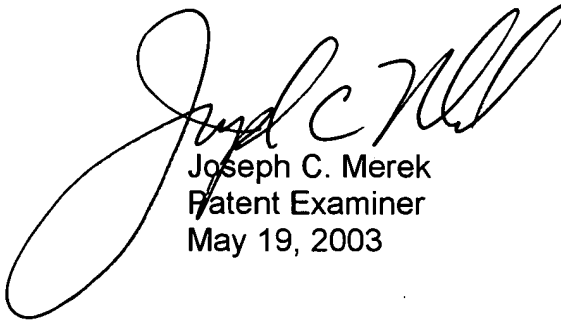
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Noorlander is cited for teaching a sample container with round and square cross-sections. Russell et al is cited for teaching a specimen or sample container with a marking panel. Lipton and Tatum are both cited for teaching specimen or sample containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Joseph C. Merek
Patent Examiner
May 19, 2003